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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
020,383	03/14/79	Jan Heeres, et al	JAB-287

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EXAMINER	
J. Tovar	
ART UNIT	PAPER NUMBER
122	6

MAILED
DATE

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

MAY 20 1980

☐ This application has been examined. ☒ Responsive to communication filed on 2/28/80 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 4 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited, Form PTO-892. 2. ☐ Notice of Informal Patent Drawing, PTO-948.
3. ☐ Notice of Informal Patent Application, Form PTO-152. 4. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-16 are pending in the application.
Of the above, claims 2, 3, 6, 7, 11, 14 AND 16 are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1, 4, 5, 8, 9, and 10 AND 15 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ The formal drawings filed on _____ are acceptable.
8. ☐ The drawing correction request filed on _____ has been ☐ approved. ☐ disapproved.
9. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has
☐ been received. ☐ not been received. ☐ been filed in parent application, serial no. _____,
filed on _____.
10. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
11. ☐ Other

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The claims in the case are 1 to 16.

The requirement for election of species made in paper #2, mailed June 20, 1979 is deemed proper, adhered to and is hereby made Final. There is no allowable generic claim. (37 CFR 1.141 (a)).

Claims 5,8,9 and 10 may be retain with elected claim 4.

Claims 2,3,6,7,11,12 to 14 and 16, stand withdrawn from further consideration as being drawn to non-elected inventions. (37 CFR 1.142 (b)).

Claims 1 4,5,8,9,10 and 15 are rejected as being unpatentable under 35 USC 112 1st, or 2nd paragraphs, or under 35 USC 101. The reasons are given under I-III below.

I

The formula of Y in claim 15 is incorrect. The names of the compounds in claims 4,5,8,9 and 10 are inconsistent with the name of the formula (f) in claims 1 and 15. (35 USC 112 2nd paragraph).

II

It is not clear how many different inventions under 35 USC 103 are defined by claims 1 and 15. How many different such inventions are defined and what are they?

III

There is no "reasonable assurance" that the scope claimed is operative for the asserted usefulness. (In re Surrey 151 USPQ 724; MPEP 716 citing In re Quattlebaum 84 USPQ 383).

Claims 1 and 15 are rejected as being improper Markush claims because they embrace compounds that are unobvious over each other.

The traverse of the above rejections has been very carefully considered but is not persuasive of error in the rejections.

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Art Unit 122

The criteria for determining which compounds are obvious ^{OVER} each other is set forth in (MPEP 706.03 (y)), 3rd paragraph, 1st sentence and in the standard set forth in Graham et al John Deere 148 PQ 459 cited in MPEP 706. It has not been shown that claims 1 and 15 meet either of these criteria.

The claims having been repeatedly rejected, the rejection is final. (164 PQ 682).

Enclosed is interview form PTOL 413. The oversight of not preparing this form at proper time is regretted.



JOSE TOVAR
EXAMINER
P ART III

J.Tovar/eb

A/C 703

557-3032

05/14/80